

Comments of the

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The Casket & Funeral Supply Association of American (CFSA) is pleased to be able to submit these comments to the Federal Trade Commission with respect to the Internet sale of caskets.

The Association will address:

1. The sale of caskets on the Internet
2. The availability of caskets to third party sellers
3. Some reasons for the selection of cremation as an alternative disposition of human remains
4. General comments

The Sale of Caskets on the Internet

Internet sellers of caskets present a new business model in funeral service. The Funeral Rule - **16 CFR 453, as amended in 1992**, opened funeral service to competition from third party sellers with the proviso that funeral directors could not charge a handling fee for caskets purchased by consumers from third parties. As a result of this amendment, third party sellers entered the funeral market and began to sell caskets and other funerary goods to consumers outside traditional channels. These sellers sold products from strip malls, the Internet and from other locations.

CFSA has often seen claims from third-party sellers that “they save consumers \$1000’s of dollars.” These claims, on closer examination, often proved spurious. While there may be occasional savings for the consumer, third party sellers appear to price their products at about 200% of the “wholesale cost” (the price at which casket manufacturers and distributors might sell said product to funeral directors). While some funeral directors may mark-up the price on their caskets more than 200%, many funeral directors price their products at comparable levels using mark-ups of about 200%. The generalization that the consumer can save \$1000’s on casket purchases is at best misleading and at worst may be a fraudulent misrepresentation.

In addition, care must be taken to ensure that accurate price comparisons are being made. Casket price is affected by the following:

- product design (square corner, square corner urn, round corner, round corner urn)
- gauge of the metal (20 gauge, 18 gauge, 16 gauge)
- type of metal (carbon steel, stainless steel, copper, bronze)
- type of solid wood (ash, birch, cherry, cedar, mahogany, maple, oak, pine, poplar, walnut, etc.)
- finish
- decorative hardware
- interior finish and material

Each of the items listed above impacts the product’s cost, appearance and value. To accurately compare prices, the same casket or the same type of casket must be compared. A veneer is not comparable in quality, price or value to a solid wood casket. A poplar or select wood casket is

less valuable than other wood caskets. Similarly, the heavier gauge metal caskets are generally more valuable and more expensive than thinner gauge metal caskets.

While claims have been made that prices charged by casket retailers, whether from brick and mortar locations or from the Internet, are lower, the Casket & Funeral Supply Association of America is unaware of any rigorous studies that demonstrate such results. The Association would welcome rigorous research, which would compare casket prices of Internet sellers and other third party casket sellers to prices charged by funeral homes. Such research, if conducted, should be designed to ensure that caskets of comparable design, finish and material utilization are in fact the subject of price comparisons.

The National Casket Retailers Association (NCRA) also objected, in its prepared presentation, to funeral directors that established their own web site locations or retail casket operations. CFSA believes that this additional level of competition should be encouraged and supported as it affords the public one more opportunity to purchase products. CFSA sees no need for such operations to be identified as owned by a funeral home or a funeral director. If the products offered are not price competitive, it is unlikely that such operations would be successful. They are simply one more level of competition within the industry -- competition that the Federal Trade Commission has sought to promote via the Funeral Industry Trade Rule.

CFSA also notes that Federal Courts have ruled that discounts offered by funeral homes are permitted within the limitations of the FTC's Funeral Rule. The courts held that such discounts are pro-consumer and pro-competitive. The National Casket Retailers Association proposes that such discounts not be permitted. NCRA would require funeral directors to adhere strictly to prices contained in individual price lists (The General Price List, The Casket Price List and the Outer Burial Container Price List). CFSA believes that this NCRA proposal is self-serving and anti-competitive as it is intended to protect the pricing prerogatives of Internet sellers and other third party sellers of funeral goods from competition.

The availability of caskets to third party sellers

CFSA believes that the FTC has been more successful than anticipated in promoting competition in the sale of funeral goods. Goods are readily available on the Internet and through a substantial number of "brick and mortar" third party sellers. The fact that funeral directors have responded (or do respond) to competitive pressures by offering court authorized package discounts simply proves that the competitive market has worked and is working.

It also appears that caskets and other funeral supplies are readily available to Internet casket sellers and to other third party sellers of funeral goods. Were product not available, Internet sellers and other third party sellers would not be able to sell caskets at all.

The NCRA objected to sales policies adopted by some casket manufacturers saying the casket retailers were unable to obtain those caskets without use of "brokers." CFSA, while it recognizes that manufacturers try to differentiate their products and some claim qualitative advantages, believes that quality differences between various casket manufacturers declined markedly during the last 20-years. The consumer is unlikely to be able to identify qualitative

differences between comparable products (gauge, design, interior materials and design, decorative hardware, etc.). Furthermore, it is doubtful that consumers recognize “casket brands.” Caskets are not identifiable as brand products as are automobiles and other consumer products. Thus, the benefit of obtaining a specific manufacturer’s caskets is yet to be demonstrated.

CFSA also believes that manufacturers or distributors have the right to determine the product to be sold and to whom that product will be sold so long as those decisions (determinations) are made independently by the manufacturer or distributor. CFSA recognizes that such decisions **cannot** be made in concert with customers or competitors but must be independently derived and announced by the manufacturer or distributor. CFSA itself has no position regarding to whom manufacturers or distributors should sell their product. The Association, as a membership requirement, requires that its members “sell goods or services to funeral homes/funeral directors or to casket companies.” This is not an “exclusive” requirement. Members may sell goods or services to others as well.

Some reasons for the selection of cremation as an alternative disposition of human remains

Dr. David Harrington, in advance and in direct testimony, suggested that regulations may be a significant factor in the decision of consumers to select cremation as an alternative. He posits that the cost of regulations at the state level is such that consumers elect less expensive alternatives in those states that are least regulated. He admits that he has excluded psychological, social and other demographic factors that might influence the consumer’s decision.

CFSA respectfully suggests that the consumer is unaware of the regulations that govern funeral service at the state level. Further, there is no reason for the consumer to become aware of such regulations in the absence of a problem with the service or product that was provided. The consumer may select cremation as an alternative for a variety of reasons:

- the personal request of the deceased,
- unwillingness to be buried in the ground or interred in a mausoleum,
- education,
- cost, etc.

However, “regulations” have not been mentioned as a factor in other research including:

Calder & Marks Seidell: “Attitudes Toward Death & Funerals,” The Center for Marketing Sciences, J.L. Kellogg Graduate School of Management, Northwestern University, 1982. pp. 145-161.

Wirthlin Group: “2000 Study of American Attitudes Toward Ritualization and Memorialization,” sponsored by the Funeral & Memorial Information Council

Wirthlin Group: “1995 Study of American Attitudes Toward Ritualization and Memorialization,” sponsored by the Funeral & Memorial Information Council

Wirthlin Group: "1990 American Attitudes and Values Affected by Death and Deathcare Services," Allied Industry Joint Committee

Santos, Dawson & Burdick, The Center for Gerontological Education, Research and Services, University of Notre Dame, Notre Dame, IN: "Project Understanding -- Multiple Antecedents and Outcomes of the Choice for Cremation," 1985-1986. Sponsored by the National Research & Information Center, Evanston, IL

Santos, Dawson and Burdick report that the expressed preference of the deceased was the most influential factor in the decision to cremate. They also report that those who selected cremation had:

- higher levels of education
- higher incomes
- lower levels of expressed "religiosity."

These conclusions also are supported in the Wirthlin Study results and by Calder and Marks Seidell.

General comments

CFSA believes that Internet sellers and third party retailers operate under some disadvantages given the fact that funeral directors, of necessity, will conduct the funeral services, prepare the remains for the services and assist the family in other ways. As a result, funeral directors have the opportunity "to meet or beat" any price offers made by Internet or third party sellers. This competitive advantage appears to have worked to the detriment of third party sellers.

However, the competition engendered by the funeral rule and by Internet sales and third party sellers has benefited consumers who obtain reduced funerary prices as a result. CFSA believes that the change in pricing patterns and the increased level of competition clearly have benefited the consumer. In fact, NCRA objects to the right of funeral directors to offer consumers discount packages under the funeral industry trade rule. In itself, the responses of funeral homes to price competition and the objections of the NCRA seem to indicate that the funeral rules has promoted competition and the consumer has been the beneficiary of that competition.

CFSA also believes that it is the role of the Federal Trade Commission to promote competition-- not to act to promote benefits for one segment of providers serving an industry or profession. The Commission has accomplished this with the funeral rule as currently written and interpreted by the courts.

The Internet, which has developed in size and scope subsequent to adoption of the latest version (1994) of the funeral rule, has helped to increase consumer awareness of the requirements of the funeral rule and has made funeral goods, including caskets, readily available to the consumer from multiple sources. CFSA is concerned about the exaggerated claims stated by some Internet and third party sellers. It would seem that the Federal Trade Commission should be able to bring enforcement action against parties that claim to be able to save consumers \$1000's of dollars

when those claims may be absolutely false. A rigorous investigation of casket prices might demonstrate the fallacy of such claims.

State regulations which “protect traditional business models” serve only to promote the interests of one group vis-à-vis another. Absent a rational basis in consumer protection for such legislation and statutes, such business protective legislation and statutes are to be deplored as anti-competitive. Often, the Federal Trade Commission and its regulations are misrepresented by parties who seek only to promote their position and protect their own, narrow self-interest.

CFSA also agrees with others who suggested that preneed sellers be required to trust specified sums to protect the consumer. Regulations to protect the consumer in this area are essential as there have been frequent reports that detail preneed fund losses because those funds were controlled by unscrupulous individuals. Trusting or insurance requirements should be applicable to Internet preneed sellers as well as brick and mortar funeral homes.

The Casket & Funeral Supply Association expresses its appreciation to the staff of the Commission for the opportunity to submit these comments.

George W. Lemke
Executive Director
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